

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 11, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP1342**

**Cir. Ct. No. 2012CV2919**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN EX REL. CORY GILMORE,**

**PETITIONER-APPELLANT,**

**V.**

**KATHLEEN NAGLE, WISCONSIN PAROLE COMMISSION,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
KEVIN E. MARTENS, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Cory Gilmore, *pro se*, appeals an order dismissing his petition for *certiorari* review. The issue is whether the circuit court properly dismissed the petition. We conclude that it did, and therefore affirm the order.

¶2 On April 15, 1996, Gilmore was sentenced to fifty-four years in prison for two counts of armed robbery, one count of aggravated battery and one count of substantial battery, as a party to a crime. On April 6, 2009, Gilmore became eligible for parole because he had served twenty-five percent of his sentence. The Wisconsin Parole Commission deferred parole for four years.

¶3 On February 3, 2012, Gilmore requested that the Commission grant him parole based on extraordinary circumstances. By letter dated February 7, 2012, the Commission denied Gilmore’s request. The Commission’s letter states: “Your recent letter to the Parole Commission has been received, reviewed and will be placed in the Institution Case File. It will be available at the time of your next parole consideration.... The Parole Commission will not consider an extraordinary release at this time.” On March 13, 2012, Gilmore filed a *pro se* petition for *certiorari* review in the circuit court. The circuit court dismissed the petition, concluding that the Commission’s letter was not a “decision” from which Gilmore could seek *certiorari* review because the Commission did not consider the merits of Gilmore’s request.

¶4 The Commission may grant early parole in extraordinary circumstances. *See* WIS. STAT. § 304.06(1m)(a) (2011-12).<sup>1</sup> That statute provides that the Commission may waive the requirement that a prisoner serve twenty-five percent of an indeterminate sentence if it determines that extraordinary circumstances warrant early release, and the sentencing court has been notified and has been permitted to comment on the proposed recommendation. *Id.* “The

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

refusal of the parole board to grant discretionary parole is subject to judicial review by writ of certiorari to the committing court.” *State ex rel. Tyznik v. DHSS*, 71 Wis. 2d 169, 172, 238 N.W.2d 66 (1976).

¶5 Gilmore argues that he is entitled to *certiorari* review because the effect of the Commission’s letter was to deny his request for release by refusing to consider the request at this time. The problem with this argument is that Gilmore has cited no legal authority for the proposition that he has a right to parole review during a period of parole deferment. Gilmore points to WIS. ADMIN. CODE PAC § 1.07(8), which provides: “the chairperson ... may grant or deny parole *at any time* prior to the issuance of a grant of parole, if extraordinary circumstances affecting an inmate are documented and verified (emphasis added).” This code provision gives *the chairperson* the right to grant or deny parole at any time, including during a period of deferment, but it does not confer on *the prisoner* the right to have his or her request considered by the Commission at any time. Gilmore has not established that he was entitled to a decision from the Commission on his request for parole based on extraordinary circumstances.

¶6 Gilmore contends that his due process rights were violated because the Commission failed to follow its own rules when it refused to consider the merits of his request for parole. He contends that the Commission did not follow an internal policy, which he refers to as DAI Policy 302.00.06, that he says provides that, when there is a request for release due to extraordinary circumstances based on an allegation that a prisoner received a disparate sentence, the records office should calculate the sentence structure and time already served.

¶7 “Wisconsin’s discretionary parole scheme does not create a protectable liberty interest in parole.” *State ex rel. Gendrich v. Litscher*, 2001 WI

App 163, ¶7, 246 Wis. 2d 814, 632 N.W.2d 878. “[I]f an inmate cannot prove a protected liberty or property interest, ‘he is not entitled to any due process protections.’” *State v. Stenklyft*, 2005 WI 71, ¶64, 281 Wis. 2d 484, 697 N.W.2d 769 (citation omitted). Because Gilmore has no protectable liberty interest in being released on discretionary parole, we reject his argument that his due process rights were violated by the Commission’s decision to defer consideration of his request until his next parole hearing.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

